

South Australia

Electricity Corporations Act 1994

An Act to provide for the supply of electrical energy; to establish a corporation or corporations for that purpose; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electricity Corporations Act 1994*.

4—Interpretation

In this Act, unless the contrary intention appears—

board, in relation to an electricity corporation, means the board of directors established under this Act as the governing body of the electricity corporation;

director means a member of the board of an electricity corporation;

electricity corporation means—

- (a) RESI; or
- (c) an electricity transmission corporation established under Part 4; or
- (d) a subsidiary of a body referred to in a preceding paragraph of this definition;

RESI means *RESI Corporation* continued in existence under Part 2;

subsidiary has the same meaning as in the *Public Corporations Act 1993*.

6—Electricity transmission corporation and functions

- (1) For the purposes of this Act, an electricity transmission corporation has electricity transmission and system control functions.
- (2) For the purposes of this Act, *electricity transmission and system control functions* of a corporation include the following:
 - (a) transmitting electricity;
 - (b) coordinating operation of the generation, transmission and distribution facilities of the South Australian electricity supply system;
 - (c) controlling the security of the South Australian electricity supply system;
 - (ca) generating electricity for security of supply purposes;
 - (d) operating and administering wholesale market trading arrangements for electricity;
 - (e) trading in electricity;
 - (f) carrying out research and development related to the corporation's functions;
 - (g) providing consultancy and other services within areas of the corporation's expertise;
 - (h) commercial development and marketing of products, processes and intellectual property produced or created in the course of the corporation's operations;
 - (i) any other function conferred on the corporation by regulation or under any other Act.

7—Electricity distribution functions

For the purposes of this Act, *electricity distribution functions* of a corporation include the following:

- (a) distributing, supplying and retailing electricity;
- (b) meeting obligations to ensure security of electricity supply to customers;
- (c) generating electricity (which may be supplied on a wholesale, retail or other basis);
- (d) trading in electricity and fuels;
- (e) carrying out research and works directed towards energy conservation and actively encouraging, advising and assisting customers and potential customers of the corporation in energy conservation and in the efficient and effective use of energy;
- (f) carrying out research and development related to the corporation's functions;
- (g) providing consultancy and other services within areas of the corporation's expertise;

- (h) commercial development and marketing of products, processes and intellectual property produced or created in the course of the corporation's operations;
- (i) any other function conferred on the corporation by regulation or under any other Act.

7A—Power of Minister to vary functions

The Minister may, by direction to an electricity corporation, relieve it of functions, add to its functions or otherwise vary its functions as the Minister considers necessary or expedient in consequence of—

- (a) action taken under the *Electricity Corporations (Restructuring and Disposal) Act 1999*; or
- (b) the operation of the *National Electricity (South Australia) Law* and the *National Electricity Code* (as defined in that Law).

Part 2—RESI Corporation

Division 1—Establishment of RESI Corporation

8—ETSA to continue as RESI

- (1) *ETSA Corporation* continues in existence as *RESI Corporation*.
- (2) RESI—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) has the functions and powers assigned or conferred by or under this or any other Act.

9—Application of *Public Corporations Act 1993*

RESI is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

10—Functions of RESI

- (1) RESI has—
 - (a) electricity distribution functions; and
 - (c) subject to Part 4, electricity transmission and system control functions.
- (2) RESI may perform its functions within and outside the State.

11—Powers of RESI

- (1) RESI has all the powers of a natural person together with powers conferred on it under this or any other Act.
- (2) RESI may exercise its powers within and outside the State.

12—RESI to furnish Treasurer with certain information

- (1) RESI must furnish the Treasurer with such information or records in the possession or control of RESI as the Treasurer may require in such manner and form as the Treasurer may require.
- (2) Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

13—Common seal and execution of documents

- (1) The common seal of RESI must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.
- (2) RESI may, by instrument under the common seal of RESI, authorise a director, an employee of RESI (whether nominated by name or by office or title) or any other person to execute documents on behalf of RESI subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of RESI.
- (4) A document is duly executed by RESI if—
 - (a) the common seal of RESI is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of RESI by a person or persons in accordance with an authority conferred under this section.

Division 2—Board

14—Establishment of board

- (1) A board of directors is established as the governing body of RESI.
- (2) The board consists of not less than four nor more than six members appointed by the Governor, of whom one may be the chief executive officer.
- (3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of RESI's functions and the proper discharge of its business and management obligations.
- (4) At least one member of the board must be a woman and one a man.
- (5) One director (who must not be the chief executive officer) will be appointed by the Governor to chair meetings of the board.
- (6) The Governor may appoint a director (who must not be the chief executive officer) to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (7) On the office of a director becoming vacant, a person may be appointed under this section to the vacant office.

15—Conditions of membership

- (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) The Governor may remove a director from office on the recommendation of the Minister.
- (3) The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.
- (4) The office of a director becomes vacant if the director—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by notice in writing to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (2).

16—Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

17—Remuneration

A director is entitled to be paid from the funds of RESI such remuneration, allowances and expenses as may be determined by the Minister.

18—Board proceedings

- (1) A quorum of the board consists of one-half of the total number of members of the board (ignoring any fraction resulting from the division) plus one.
- (2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.
- (3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:
 - (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
 - (b) in any other case—a director (who must not be the chief executive officer) chosen by the directors present at the meeting will preside at the meeting.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

- (6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) Subject to this Act, the board may determine its own procedures.

Division 3—Staff

19—Staff of RESI

- (1) The chief executive officer of RESI will be appointed by the board with the approval of the Minister.
- (2) RESI may appoint such other employees as it thinks necessary or desirable.
- (3) An employee's appointment will be on terms and conditions fixed by RESI.

Part 4—Electricity Transmission Corporation

Division 1—Establishment of corporation

34—Establishment of corporation

- (1) An electricity transmission corporation may be established by the Governor by regulation.
- (2) The regulations must name the corporation.
- (3) RESI ceases to have electricity transmission and system control functions on and from the date specified for that purpose in the regulations.

35—Interpretation

In the remaining provisions of this Part, a reference to the transmission corporation is a reference to an electricity transmission corporation established under section 34.

36—Corporate capacity

The transmission corporation—

- (a) is a body corporate; and

- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) has the functions and powers assigned or conferred by or under this or any other Act.

37—Application of *Public Corporations Act 1993*

The transmission corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

38—Functions may be performed within or outside State

The transmission corporation may perform its functions within and outside the State.

39—Powers of corporation

- (1) The transmission corporation has all the powers of a natural person together with powers conferred on it under this or any other Act.
- (2) The transmission corporation may exercise its powers within and outside the State.

40—Corporation to furnish Treasurer with certain information

- (1) The transmission corporation must furnish the Treasurer with such information or records in the possession or control of the corporation as the Treasurer may require in such manner and form as the Treasurer may require.
- (2) Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

41—Common seal and execution of documents

- (1) The common seal of the transmission corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.
- (2) The transmission corporation may, by instrument under the common seal of the corporation, authorise a director, an employee of the corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the corporation subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the transmission corporation.
- (4) A document is duly executed by the transmission corporation if—
 - (a) the common seal of the corporation is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of the corporation by a person or persons in accordance with an authority conferred under this section.

Division 2—Board

42—Establishment of board

- (1) A board of directors is established as the governing body of the transmission corporation.
- (2) The board consists of—
 - (a) four members appointed by the Governor; and
 - (b) the chief executive officer.
- (3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the transmission corporation's functions and the proper discharge of its business and management obligations.
- (4) At least one member of the board must be a woman and one a man.
- (5) One director (who must not be the chief executive officer) will be appointed by the Governor to chair meetings of the board.
- (6) The Governor may appoint a director (who must not be the chief executive officer) to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (7) On the office of an appointed director becoming vacant, a person may be appointed under this section to the vacant office.

43—Conditions of membership

- (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) The Governor may remove an appointed director from office on the recommendation of the Minister.
- (3) The Minister may recommend the removal of an appointed director on any ground that the Minister considers sufficient.
- (4) The office of an appointed director becomes vacant if the director—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by notice in writing to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (2).

44—Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

45—Remuneration

An appointed director is entitled to be paid from the funds of the transmission corporation such remuneration, allowances and expenses as may be determined by the Minister.

46—Board proceedings

- (1) A quorum of the board consists of three members.
- (2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.
- (3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:
 - (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
 - (b) in any other case—a director (who must not be the chief executive officer) chosen by the directors present at the meeting will preside at the meeting.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) Subject to this Act, the board may determine its own procedures.

Division 3—Staff

47—Staff of corporation

- (1) The chief executive officer of the transmission corporation will be appointed by the board with the approval of the Minister.
- (2) The transmission corporation may appoint such other employees as it thinks necessary or desirable.
- (3) An employee's appointment will be on terms and conditions fixed by the transmission corporation.

Part 5—Miscellaneous

48—Mining at Leigh Creek

- (1) A sale or lease of any seam of coal vested in the Crown at or near Leigh Creek or a contract for any such sale or lease or a right to mine any such seam of coal cannot be made or granted by or on behalf of the Crown except as authorised by or under regulations made under the *Electricity Corporations (Restructuring and Disposal) Act 1999*.
- (2) Without limiting SAGC's powers, SAGC may—
 - (a) mine (by open or closed working) any seams of coal, vested in the Crown or SAGC, at or near Leigh Creek; and
 - (b) mine (by open or closed working) any substance, vested in the Crown or SAGC, discovered in the course of operations for the mining of coal; and
 - (c) treat, grade, or otherwise prepare for sale, and use, sell or otherwise dispose of any coal or other substance so mined.
- (3) SAGC may authorise another body to exercise all or any of the powers conferred on SAGC under this section.
- (4) In this section—

SAGC means *SA Generation Corporation* established under Part 3 before the repeal of that Part, as converted into a company under the *Corporations Law* (whether or not its shares remain in Crown ownership).

48A—Liability of electricity corporations to council rates

- (1) An electricity corporation is liable to pay rates under the *Local Government Act 1934*.
- (2) For rating purposes under the *Local Government Act 1934*—
 - (a) land and buildings of an electricity corporation are ratable property within the meaning of that Act; and
 - (b) the following are not ratable property within the meaning of that Act:
 - (i) plant or equipment used by an electricity corporation in connection with the generation, transmission or distribution of electricity (whether or not the plant or equipment is situated on land owned by the corporation);

- (ii) easements, rights of way or other similar rights (including such rights arising by virtue of a licence) that have been granted or operate in connection with the generation, transmission or distribution of electricity.
- (3) This section operates despite any provisions of the *Local Government Act 1934* or the *Public Corporations Act 1993* and an electricity corporation does not have any liability under the *Public Corporations Act 1993* to pay to the Treasurer any amount as the equivalent of rates under the *Local Government Act 1934*.

49—Regulations

The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

Schedule 1—Superannuation

Part A—Preliminary

1—Interpretation

- (1) In this Schedule, unless the contrary intention appears—
 - the Board* means the Electricity Industry Superannuation Board—see Part B;
 - electricity supply industry* has the same meaning as in the *Electricity Act 1996*;
 - employer* means—
 - (a) a person or body who employs a pre-privatisation member of the Scheme in the electricity supply industry;
 - (b) a person or body who employs any other member of the Scheme in the electricity supply industry;
 - (c) a public sector employer who employs a pre-privatisation member of the Scheme who accepted an offer made under section 24 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*;
 - (d) a gas trading company that employs a pre-privatisation member of the Scheme or any other member of the Scheme;
 - gas trading company* means—
 - (a) Terra Gas trader Pty Ltd; and
 - (b) any other body corporate—
 - (i) carrying on the business of trading in gas; or
 - (ii) that employs persons in, or in relation to, the business of trading in gas,
- that has been declared by proclamation to be a gas trading company for the purposes of this Schedule;
- member* of the Scheme has the same meaning as in the Trust Deed;

pre-privatisation member means a person who was a member of Division 2, 3 or 4 of the Electricity Industry Superannuation Scheme immediately before the commencement of clause 10 but does not include a person who, after the commencement of that clause, ceased to be a member of the Scheme but is subsequently re-admitted to membership of the Scheme;

private sector employer means an employer that is not the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

public sector employer means an employer that is the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

the Rules means the Rules referred to in the Trust Deed;

the Scheme means the Electricity Industry Superannuation Scheme—see clause 3 of the Trust Deed;

the Scheme assets has the same meaning as in the Trust Deed;

State-owned company has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

the Trust Deed means the Electricity Industry Superannuation Scheme Trust Deed.

- (2) In this Schedule, a reference to a Commonwealth Act is a reference to that Act as amended from time to time or an Act enacted in substitution for that Act.

Part B—The Electricity Industry Superannuation Board

2—The Electricity Industry Superannuation Board

- (1) The ETSA Superannuation Board continues in existence under the name *Electricity Industry Superannuation Board*.
- (2) The Board—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) is a constitutional corporation for the purposes of section 19 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; and
 - (e) has the functions and powers assigned or conferred by this Schedule, the Trust Deed and the Rules; and
 - (f) is not an agency or instrumentality of the Crown.
- (3) Where a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Board.

3—Function of Board

- (1) Subject to subclause (2), the Board is the trustee of the Scheme and is responsible for all aspects of the administration of the Scheme pursuant to this Schedule, the Trust Deed and the Rules.

- (2) Subject to subclause (3), the Board ceases to be the trustee of the Scheme at the end of the financial year in which, for the first time, all members of the Scheme who are employed in the electricity supply industry are employed by private sector employers.
- (3) The private sector employers may, by a majority decision, extend the Board's office as trustee of the Scheme.
- (4) If the Board ceases to be the trustee of the Scheme, the Treasurer may, by notice in the Gazette, dissolve the Board and in that event any assets of the Board in addition to the Scheme assets will vest in the new trustee of the Scheme and any liabilities of the Board will attach to the new trustee.

4—Board's membership

- (1) The Board consists of the following members:
 - (a) two members elected by the members of the Scheme in accordance with the Rules; and
 - (b) four members appointed by the employers pursuant to the Rules; and
 - (d) two members appointed by the United Trades and Labor Council; and
 - (e) an independent member appointed by the other members of the Board.
- (2) In the case of the members elected under subclause (1)(a), and in the case of the members appointed under subclause (1)(b), at least one must be a woman and at least one must be a man.
- (3) A member of the Board may, with the approval of the Board, appoint a deputy to the member and the deputy may, in the absence or during a temporary vacancy in the office of that member, act as a member of the Board.
- (4) Subject to subclause (5), a member of the Board will be elected or appointed for a term not exceeding three years determined in accordance with the Rules.
- (5) A member of the Board elected or appointed to fill a casual vacancy will be elected or appointed for the balance of the term of his or her predecessor.
- (6) The office of a member of the Board becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not re-elected or reappointed; or
 - (c) resigns by written notice to the Board; or
 - (d) is removed from office by the Board on the ground—
 - (i) of mental or physical incapacity to carry out official duties satisfactorily; or
 - (iv) that the member is a disqualified person within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

5—Procedure at meetings of Board

- (1) A meeting of the Board will be chaired by the independent member but, if he or she is absent, the meeting will be chaired by a member of the Board chosen by those present.
- (2) Subject to subclause (3), the Board may act despite vacancies in its membership.

- (3) Six members of the Board constitute a quorum for a meeting of the Board.
- (4) Each member present at a meeting of the Board is entitled to one vote on a matter arising for determination at the meeting.
- (5) A decision of the Board requires the vote of six members of the Board in favour of the decision.
- (6) Subject to this Schedule, the Trust Deed and the Rules, the Board may determine its own procedures.
- (7) The Board must keep minutes of its proceedings.

Part C—Ownership of Scheme assets

6—Ownership of Scheme assets

- (1) The Scheme assets are vested in the Board and if the Board ceases to be the trustee of the Scheme, the Scheme assets are vested in the trustee for the time being of the Scheme.
- (2) No stamp duty, financial institutions duty or debits tax is payable under the law of the State in respect of the vesting of Scheme assets in the Board or any other trustee of the Scheme by subclause (1).
- (3) No person has an obligation under the *Stamp Duties Act 1923*, the *Financial Institutions Duty Act 1983* or the *Debits Tax Act 1990*—
 - (a) to lodge a statement or return relating to a matter referred to in subclause (2); or
 - (b) to include in a statement or return a record or information relating to such a matter.

Part D—Reports

7—Reports

- (1) The Board must, on or before 31 October in each year, submit a report to the Treasurer on the operation of this Schedule, the Trust Deed and the Rules and on the management and investment of the Scheme assets during the financial year ending on 30 June in that year.
- (2) The report under subclause (1) must include the audited financial statements of the Scheme for the relevant financial year.
- (3) An actuary appointed by the Board must, in relation to the triennium ending on 30 June 1999 and thereafter in relation to each succeeding triennium, report to the employers, the Board and the Treasurer—
 - (a) on the employer costs of the Scheme at the time of making the report and during the foreseeable future; and
 - (b) on the ability of the Scheme assets to meet the Scheme's current and future liabilities,

(each report must be submitted within 12 months after the end of the relevant triennium).

- (4) The Treasurer must, within six sitting days after receiving a report under this clause, have copies of the report laid before both Houses of Parliament.
- (5) Where, under the Rules, the Board determines a rate of return that is at variance with the net rate of return achieved by investment of the Scheme assets, the Board must include its reasons for the determination in its report for the relevant financial year.

Part E—Transfer of members of the non-contributory scheme

8—Transfer of members of the non-contributory scheme

- (1) The Treasurer may, by notice in writing to the Electricity Industry Superannuation Board and the South Australian Superannuation Board before the relevant day, transfer a member of the non-contributory scheme who is no longer employed by an employer within the meaning of this Schedule but who is entitled to preserved benefits in the non-contributory scheme to a superannuation scheme (to be specified in the notice) established by an Act of Parliament.
- (2) The trustee of a scheme to whom a person is transferred under subclause (1) must open an employer contribution account in the name of the person and must credit to the account the balance credited in favour of the person in the non-contributory scheme immediately before the transfer.
- (3) The Governor may, by regulation, make provisions of a transitional nature in relation to the transfer of a person under this clause.
- (4) A regulation under subclause (3) may—
 - (a) modify the provisions of the Act establishing the scheme to which the person has been transferred in their application to that person;
 - (b) operate prospectively or retrospectively from a date specified in the regulation.
- (5) A notice under subclause (1) must identify the person or persons to whom it applies.
- (6) On receipt of the notice, the Electricity Industry Superannuation Board must give notice to each person transferred advising him or her of the transfer.
- (7) On the transfer of a person under this clause, his or her entitlements under the non-contributory scheme cease.
- (8) The South Australian Superannuation Board may, from time to time, require the Electricity Industry Superannuation Board to provide it with information that is in its possession relating to persons transferred under this clause.
- (9) Despite any other Act or law to the contrary, the Electricity Industry Superannuation Board must comply with a requirement under subclause (8).
- (10) In this clause—

the non-contributory scheme means the non-contributory superannuation scheme maintained under Part H of Schedule 1 of this Act repealed by the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

the relevant day means the day on which the approval of the Treasurer ceases to be required for the variation or replacement of the Rules.

Part F—Miscellaneous

9—Exclusion of section 35B of *Trustee Act 1936*

Section 35B of the *Trustee Act 1936* does not apply to, or in relation to, the Scheme.

10—Closure of Division 2 of the Scheme

- (1) Subject to subclause (2), a person cannot apply for membership of Division 2 of the Scheme after the commencement of this clause.
- (2) Subclause (1) does not apply to a person who is a member of Division 3 or 4 of the Scheme when he or she applies for membership of Division 2.

11—Treasurer may vary Rules in relation to taxation

- (1) The Treasurer may, after consultation with the trustee of the Scheme, insert into the Rules a rule or rules relating to changes in benefits for members and employer costs in relation to those benefits, following the Scheme's loss of constitutional protection.
- (2) A rule inserted by the Treasurer may—
 - (a) prescribe a decrease in the level of gross benefits; or
 - (b) require benefits to be paid on an untaxed basis or partly on an untaxed basis; or
 - (c) make provisions of the kind referred to in both paragraphs (a) and (b),in order to avoid or reduce an increase in employer costs caused by changes in the incidence of taxation as a result of the Scheme's loss of constitutional protection.
- (3) Subject to subclause (4), the change in benefits effected by a rule made under this clause must not result in the level of net benefits to which a member, or a person in respect of a member, is entitled being less than the level of net benefits to which he or she would have been entitled if the Scheme had not lost constitutional protection.
- (4) The level of net benefits to which a member, or a person in respect of a member, is entitled may be reduced below the level permitted by subclause (3) to avoid or reduce an increase in employer costs attributable to tax under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth in relation to the member.
- (5) A rule made under this clause may operate differently in relation to—
 - (a) different classes of members;
 - (b) different classes of benefits;
 - (c) different classes of components of benefits.
- (6) A rule made under this clause—
 - (a) must be made by notice in writing given to the trustee of the Scheme before the relevant day;
 - (b) may be varied or revoked by the Treasurer by notice in writing to the trustee before that day;
 - (c) is not subject to the *Subordinate Legislation Act 1978*.

- (7) The trustee of the Scheme may vary or replace a rule inserted in the Rules under this clause in the same manner as it can vary or replace any of the other rules of the Scheme.
- (8) In this clause—
- level of gross benefits* in relation to a member means the amount of the benefits to which the member, or another person in respect of the member, is entitled under the Scheme before tax attributable to those benefits has been paid or allowed for;
- level of net benefits* in relation to a member means the amount of the benefits to which the member, or another person in respect of the member, is entitled after tax attributable to those benefits has been paid or allowed for using the tax rates applicable on the day on which the Scheme loses constitutional protection and based on the assumption that the member has reached the age of 55 years;
- the relevant day* means the day on which the approval of the Treasurer ceases to be required for the variation or replacement of the Rules.
- (9) For the purposes of this clause—
- (a) benefits are paid on an untaxed basis where the trustee of the Scheme has made an election under the *Income Tax Assessment Act 1936* of the Commonwealth as a result of which the person receiving the benefits is liable for a higher rate of tax in relation to them;
 - (b) the Scheme loses constitutional protection when it ceases to be a constitutionally protected fund for the purposes of the *Income Tax Assessment Act 1936* of the Commonwealth.

12—Appeal to trustee against rule under clause 11

- (1) A member of the Scheme, or if the member has died, a person who is entitled to receive a benefit in respect of the member, may appeal to the trustee of the Scheme on the ground that a rule made under clause 11 has the effect in relation to the member of reducing the level of net benefits to which the member or other person is entitled below the level permitted by clause 11.
- (2) An appeal—
- (a) must be made in the manner and form determined by the trustee;
 - (b) may be made at any time before the expiration of six months after benefits have become payable to the member or other person and the member or other person has received a written statement from the trustee as to the amount of the benefits.
- (3) If the trustee (after giving the appellant and the employer of the member, or former member, a reasonable opportunity to appear and be heard, either personally or by representative) is satisfied that the appeal should be allowed, it must—
- (a) vary the effect of the rule as it applies to, or in respect of, the member; and
 - (b) determine the amount of the benefits to which the member or other person is entitled following the variation under paragraph (a); and
 - (c) make any ancillary determination or order that in its opinion is necessary or desirable.

- (4) No proceedings for judicial review or for a declaration, injunction, writ, order or other remedy (other than an appeal under this clause) may be brought before a court, tribunal, or other person or body to challenge or question the validity or operation of a rule made under clause 11.
- (5) In this clause—
level of net benefits has the same meaning as in clause 11.

13—Separation of Trust Deed from Schedule

- (1) The Trust Deed ceases to form part of this Schedule on a day to be fixed by the Treasurer for that purpose by notice published in the Gazette.
- (2) The Trust Deed remains in full force and effect after separation from this Schedule under subclause (1).

14—Obligations of employers

- (1) An employer who employs a pre-privatisation member of the Scheme (whether before or after separation of the Trust Deed from this Schedule under clause 13) is bound by the Trust Deed as an employer under the Deed whether that person or body has agreed to be bound or not.
- (2) Subject to subclause (4), where the employment of a member is transferred by an employee transfer order under the *Electricity Corporations (Restructuring and Disposal) Act 1999* from an electricity corporation or a State-owned company to a purchaser under a sale/lease agreement within the meaning of that Act, the purchaser is liable (unless the Trust Deed or the Rules expressly provide otherwise) to pay to the Scheme within the period of five years immediately following the transfer of the employment of the member an amount (to be determined by an actuary appointed by the Treasurer) sufficient to meet the unfunded liability of the Scheme in respect of the member's entitlement to benefits that accrued before the transfer of the member's employment to the purchaser.
- (2a) Subject to subclause (4), where shares in an electricity corporation or a State-owned company are transferred pursuant to a sale/lease agreement within the meaning of the *Electricity Corporations (Restructuring and Disposal) Act 1999*, the former electricity corporation or State-owned company is liable (unless the Trust Deed or the Rules expressly provide otherwise) to pay to the Scheme within the period of five years immediately following the transfer of the shares an amount (to be determined by an actuary appointed by the Treasurer) sufficient to meet the unfunded liability of the Scheme in respect of benefits—
 - (a) that accrued before the transfer of the shares occurred; and
 - (b) that accrued for the benefit of those persons who were employed by the corporation or company and were members of the Scheme when the shares were transferred.

- (3) The Treasurer is liable to pay to the Scheme the amount required to fully satisfy the whole or that part (if any) of the liability of a purchaser under subclause (2) or a former electricity corporation or State-owned company under subclause (2a) that has not been satisfied by the purchaser or former electricity corporation or State-owned company within the period referred to in the relevant subclause and, on payment of that amount by the Treasurer, the purchaser or former electricity corporation or State-owned company is liable to pay the same amount to the Treasurer.
- (4) The Treasurer may, by notice in writing to the purchaser or the former electricity corporation or State-owned company, release the purchaser or former electricity corporation or State-owned company from the whole or part of its liability under subclause (2) or (2a) and, in that event, the Treasurer must pay to the Scheme the equivalent of the amount by which the liability has been reduced.

The Electricity Industry Superannuation Scheme Trust Deed

1—Operation of Deed

- (1) This Deed forms part of Schedule 1 of the *Electricity Corporations Act 1994* as substituted by the *Electricity Corporations (Restructuring and Disposal) Act 1999* until the Schedule and this Deed are separated under clause 13 of the Schedule.
- (2) This Deed comes into operation at the same time as the Schedule.

2—Interpretation

- (1) In this Trust Deed, unless the contrary intention appears—

actuary means—

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia; or
- (b) a partnership at least one member of which must be a Fellow or Accredited Member of the Institute of Actuaries of Australia; or
- (c) a body corporate that employs or engages a Fellow or Accredited Member of the Institute of Actuaries of Australia for the purpose of providing actuarial advice;

the Board means the Electricity Industry Superannuation Board continued in existence by Schedule 1 of the *Electricity Corporations Act 1994*;

commencement of this Deed—see clause 1;

electricity supply industry has the same meaning as in the *Electricity Act 1996*;

employer means—

- (a) a person or body who employs a pre-privatisation member of the Scheme in the electricity supply industry;
- (b) a person or body who employs any other member of the Scheme in the electricity supply industry;
- (c) a public sector employer who employs a pre-privatisation member of the Scheme who accepted an offer made under section 24 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

- (d) a gas trading company that employs a pre-privatisation member of the Scheme or any other member of the Scheme;

gas trading company means—

- (a) Terra Gas trader Pty Ltd; and
(b) any other body corporate—
(i) carrying on the business of trading in gas; or
(ii) that employs persons in, or in relation to, the business of trading in gas,

that has been declared by proclamation to be a gas trading company for the purposes of this Deed;

member of the Scheme means a person who is a member of the Scheme pursuant to this Deed;

pre-privatisation member means a person who was a member of Division 2, 3 or 4 of the Electricity Industry Superannuation Scheme immediately before the commencement of clause 10 of the Schedule but does not include a person who, after the commencement of that clause, ceased to be a member of the Scheme but is subsequently re-admitted to membership of the Scheme;

private sector employer means an employer that is not the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

public sector employer means an employer that is the Crown, an electricity corporation or a State-owned company or any instrumentality of the Crown or statutory corporation;

relevant law means the law for the time being set out in—

- (a) the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; and
(b) the *Income Tax Assessment Act 1936* of the Commonwealth; and
(c) the *Superannuation (Resolution of Complaints) Act 1993* of the Commonwealth; and
(d) such other Act, regulation, rule or other legislative instrument as the Trustee determines should be included in this definition;

repealed Schedule means Schedule 1 of the *Electricity Corporations Act 1994* repealed by the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

the Rules means the Rules of the Electricity Industry Superannuation Scheme (being the Rules of the ETSA Contributory Superannuation Scheme and the ETSA Non-Contributory Superannuation Scheme at the commencement of this Deed) as varied or replaced from time to time;

the Schedule means Schedule 1 of the *Electricity Corporations Act 1994* as substituted by the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

the Scheme means the Electricity Industry Superannuation Scheme—see clause 3;

the Scheme assets—see clause 9;

State-owned company has the same meaning as in the *Electricity Corporations (Restructuring and Disposal) Act 1999*;

Trustee means the Board or any body for the time being appointed to the office of trustee of the Scheme.

- (2) In this Deed, a reference to a Commonwealth Act is a reference to that Act as amended from time to time or an Act enacted in substitution for that Act.
- (3) The Rules form part of this Deed and accordingly a reference to the Deed includes a reference to the Rules.
- (4) Although the Rules form part of the Deed, a provision of the Deed applies to the exclusion of a provision of the Rules to the extent of any inconsistency between them.
- (5) In this Deed—
 - (a) every word of the masculine gender will be construed as including the feminine gender;
 - (b) every word of the feminine gender will be construed as including the masculine gender;
 - (c) every word in the singular number will be construed as including the plural number;
 - (d) every word in the plural number will be construed as including the singular number;
 - (e) every word in either of those genders or numbers will be construed as including a body corporate as well as an individual.
- (6) A reference in this Deed to an Act, regulation, rule or other legislative instrument includes a reference to—
 - (a) that instrument as amended from time to time; and
 - (b) an instrument that replaces or supersedes it; and
 - (c) a regulation, rule or other instrument, and a written determination or ruling, made under or in connection with that instrument.
- (7) The transfer of employment of a member from one employer to another employer under the Scheme (however effected) will not be taken to involve the termination of the previous employment and does not give rise to an immediate or delayed entitlement to benefits under the Scheme.
- (8) The reference to *employer* in subclause (7) includes a person or body who was not an employer for the purposes of this Deed until the employment of the member referred to in that subclause was transferred to the person or body.

3—Continuation of Scheme

- (1) The ETSA Contributory Superannuation Scheme continues in existence under the name *Electricity Industry Superannuation Scheme*.
- (2) The ETSA Non-Contributory Superannuation Scheme continues in existence as a division of the Electricity Industry Superannuation Scheme.

- (3) Subject to subclause (2), the Scheme will be treated as made up of the divisions specified in the Rules.
- (4) The Trustee may divide the Scheme assets into divisions according to the different investments that may be made of those assets.
- (5) The Scheme assets will be allocated to the divisions of the Scheme in accordance with the Rules.

4—Rules of the Scheme

- (1) Subject to the relevant law, the Trustee may, by instrument in writing, vary or replace the Rules.
- (2) The *Subordinate Legislation Act 1978* does not apply to, or in relation to, rules made under this clause.
- (3) The Rules must conform with the provisions of the Schedule and this Trust Deed.
- (4) Where the variation or replacement of a rule would result in an increase in the contribution to be made by an employer or increase the liability of the employer under the Scheme in any other way, the rule cannot be varied or replaced without the approval of the employer.
- (5) A variation or replacement of the Rules will be taken to come into operation on the date specified in the instrument varying or replacing the Rules whether being a date before or after the date on which the instrument was made.
- (6) The Rules may confer discretionary powers.

5—Reduction in benefits on changes in taxation

- (1) Subject to subclause (3), where the cost to employers of maintaining the existing level of benefits is increased by a change in the incidence of taxation occurring after the Scheme loses its status as a constitutionally protected fund under the *Income Tax Assessment Act 1936* of the Commonwealth, the level of benefits is reduced to the extent necessary to avoid an increase in that cost.
- (2) The extent of the reduction in the level of benefits under subclause (1) must be determined by the Trustee on the advice of an actuary.
- (3) If the Trustee and all the employers agree that subclause (1) will operate to reduce the level of benefits to a lesser extent than is provided by that subclause, the subclause will operate in accordance with the agreement.

6—Membership of the Scheme

- (1) The following persons are members of the Scheme:
 - (a) subject to subclause (2), a person who was a contributor under the repealed Schedule immediately before the commencement of this Deed; and
 - (b) a person who was a member of the non-contributory scheme under the repealed Schedule immediately before the commencement of this Deed; and

- (c) all other persons who are accepted as members of the Scheme pursuant to the Rules.
- (2) A contributor who died before the commencement of this Deed is a former member of the Scheme for the purposes of this Deed.
- (3) A person ceases to be a member of the Scheme on death or when his or her rights in relation to superannuation under the Scheme have been exhausted.

8—Payment of benefits

Benefits are payable from the Scheme assets in accordance with the Rules.

9—Scheme assets

- (1) The Scheme assets are subject to the management and control of the Trustee.
- (2) The Scheme assets comprise—
 - (a) contributions made by the contributors and the employers to the Scheme pursuant to the Rules; and
 - (b) interest and other income and other accretions arising from investment of the Scheme assets; and
 - (c) amounts paid to the Scheme pursuant to clause 14 of the Schedule; and
 - (d) any other income or assets transferred to the Scheme as part of the Scheme assets; and
 - (e) such other assets as are required by the Rules to be included in the Scheme assets.
- (3) The following amounts will be paid from the Scheme assets:
 - (a) benefits that are payable to, or in respect of, members or former members pursuant to the Rules; and
 - (b) the costs and other expenses of administering the Scheme; and
 - (c) such other amounts as are provided for by the Rules.

10—Investment of Scheme assets

- (1) The Trustee may invest money comprising the Scheme assets that is not immediately required in any manner in which it could invest that money—
 - (a) if acting as a trustee; or
 - (b) if acting on its own behalf and not as a trustee.
- (2) Without limiting subclause (1), the Trustee may—
 - (a) participate in any financial arrangement (usually called a synthetic or derivative investment) for the purpose of risk management or hedging;
 - (b) pool Scheme assets with other persons' assets for investment purposes.

18—Accounts

- (1) The Trustee must keep proper accounts of receipts and payments in relation to the Scheme and must, in respect of each financial year, prepare financial statements in relation to the Scheme.

- (2) The Trustee must, in accordance with the relevant law, appoint an auditor to audit the accounts and financial statements of the Scheme in accordance with that law.
- (3) The Trustee must, in accordance with the relevant law, appoint an actuary to prepare reports in relation to the Scheme in accordance with that law.¹

Note—

- 1 The remaining clauses of the Trust Deed will be renumbered when 36/1999 Sch 3 Pt 4 cl 4(j) comes into operation.

12—Insurance

The Trustee may purchase and renew insurance of any kind for the purposes of the Scheme and may pay all insurance premiums from the Scheme assets.

13—Exclusion of liability and indemnity

- (1) The Trustee and the members and former members, or members or former members of the governing body, of the Trustee and employees and former employees of the Trustee are not liable in relation to any act or omission in connection with the administration of the Scheme or the Scheme assets in compliance, or purported compliance, with the Schedule, this Deed or the Rules except to the extent that the person—
 - (a) fails to act honestly; or
 - (b) intentionally or recklessly fails to exercise proper care and diligence.
- (2) If, despite subclause (1), a person referred to in that subclause incurs a liability which the subclause purportedly protects him or her from, the person will be indemnified in respect of that liability from the Scheme assets.

14—Benefits cannot be assigned

A right to a benefit under the Scheme cannot be assigned.

15—Governing law

This Deed is governed by the law of South Australia.

16—Severance of invalid provision

Any provision of this Deed that is—

- (a) invalid in whole or in part; or
- (b) required to be limited or read down in order to be valid,

is severed or limited or read down to the extent of the invalidity, but the remainder of the provision continues in full force and effect.

17—Withdrawal of employers and winding up of the Scheme

- (1) Subject to this clause, an employer may withdraw from the Scheme in accordance with the Rules.
- (2) An employer who employs one or more pre-privatisation members of the Scheme in the electricity supply industry cannot withdraw from the Scheme without the consent in writing of the member or members concerned.

- (2a) A gas trading company that employs one or more pre-privatisation members of the Scheme cannot withdraw from the Scheme without the consent in writing of the member or members concerned.
- (3) If all the employers have withdrawn from the Scheme the Trustee must wind the Scheme up in accordance with the Rules.

Schedule 2—Transitional provisions

2—Interpretation

In this Schedule—

the repealed Act means the *Electricity Trust of South Australia Act 1946*;

the Trust means the Electricity Trust of South Australia established under the repealed Act.

3—Transitional provisions relating to Trust

- (1) ETSA is the same body corporate as the Electricity Trust of South Australia established under the repealed Act.
- (2) A reference in an Act or instrument to the Trust is (where the context admits) to be read as a reference to ETSA.
- (3) The offices of the members of the Trust are vacated on the commencement of this Act.

4—Transitional provisions relating to superannuation

- (1) The ETSA Superannuation Board is the same body corporate as the Electricity Trust of South Australia Superannuation Board established under the repealed Act.
- (2) The ETSA Superannuation Fund is the same fund as the Electricity Trust of South Australia Superannuation Fund established under the repealed Act.
- (3) The ETSA Contributory Superannuation Scheme is the same scheme as the Electricity Trust of South Australia Contributory Superannuation Scheme established under the repealed Act.
- (4) The Electricity Trust of South Australia Non-Contributory Superannuation Scheme established under the repealed Act continues as a non-contributory superannuation scheme under Schedule 1.
- (5) The Rules in force under Part 4B of the repealed Act continue in force as Rules under Schedule 1.

5—Statutory easement

- (1) An electricity corporation has an easement over land where—
 - (a) a part of the transmission or distribution system operated by the corporation is on, above or under the land and the land does not belong to the corporation; and
 - (b) that part of the transmission or distribution system was as at 1 November 1988 on, above or under the land and the land did not then belong to the Trust.

- (2) The easement entitles the electricity corporation—
- (a) to maintain the relevant part of the transmission or distribution system on, above or under the land affected by the easement;
 - (b) to enter the land, by its agents or employees, at any reasonable time, for the purpose of examining, maintaining, repairing, modifying or replacing the relevant part of the transmission or distribution system;
 - (c) to bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.
- (3) The powers conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment of the land by other persons.
- (4) If there is any inconsistency between this clause and an instrument to which the electricity corporation is a party, the terms of the instrument prevail to the extent of the inconsistency.
- (4a) The electricity corporation may, by instrument in writing—
- (a) suspend or limit rights or impose conditions on the exercise of rights arising under the easement under this clause; or
 - (b) surrender (in whole or in part) the easement under this clause,
- and such an instrument has effect according to its terms.
- (5) An easement under this clause need not be registered.
- (6) In this clause—
- cable*** includes any kind of electrical conductor;
- transmission or distribution system*** means—
- (a) the network of cables by which an electricity corporation transmits or distributes electricity;
 - (b) the associated transformers and equipment of an electrical or other kind;
 - (c) structures for the support of any such cables, transformers or equipment,
- and includes any cable, transformer, equipment or structure used on a temporary basis for purposes related to the maintenance, repair or replacement of any part of the transmission or distribution system.

6—Inscribed debenture stock

- (1) This Act does not affect rights or liabilities in respect of debentures issued by the Trust before the commencement of this Act.
- (2) ETSA—
- (a) may, on the application of the owner of any such debentures, convert them into inscribed debenture stock; and
 - (b) must keep a register of inscribed debenture stock (*the Register*).
- (3) Inscribed debenture stock will be taken to have been issued, and debentures will be taken to have been converted into inscribed debenture stock, when the name of the owner, and the amount and description of the stock, and any other particulars determined by ETSA, are entered in the Register.

- (4) A person whose name is inscribed in the Register as the owner of inscribed debenture stock will be taken to be the owner of that stock and may dispose of and transfer it in the manner prescribed by this clause and may give effectual receipts for any money paid by way of consideration for the stock.
- (5) ETSA may, if it thinks reasonable cause exists for doing so, issue to any person a certificate stating that any person was (on a day and at an hour mentioned in the certificate) inscribed in the Register as the owner of a specified amount of inscribed debenture stock.
- (6) A certificate issued under subclause (5) will, in the absence of evidence to the contrary, be taken to be evidence of the fact stated in it.
- (7) The legal ownership of inscribed debenture stock is not transferred from the owner whose name is inscribed in the Register to any other person until—
 - (a) that owner and the transferee have executed a transfer in a form fixed by ETSA, and the name of the transferee and the amount of the stock have been entered in the Register; or
 - (b) a person to whom the title to the stock has passed on death or bankruptcy or otherwise by operation of law has produced to ETSA such reasonable evidence of title as ETSA requires, and that person's name has been entered in the Register as the owner of the stock.
- (8) No notice of any trust, express, implied or constructive, affecting inscribed debenture stock, may be received by ETSA or entered in the Register or any other book kept by ETSA.
- (9) Subject to the provisions of this clause relating to the transfer and transmission of inscribed debenture stock and notice of trusts, equitable interests may be enforced against the owners of inscribed debenture stock.

Schedule 3—Transfer of assets, liabilities and staff between electricity corporations

Part A—Preliminary

1—Interpretation

In this Schedule—

asset means property including property held in a fiduciary capacity;

document includes any disc, tape or other medium in which information is stored;

guarantee includes indemnity;

instrument includes a legislative instrument and a judgment, order or process of a court;

land includes an estate or interest in land;

legal proceedings includes an arbitration and an administrative proceeding;

liability means a present, future or contingent liability (arising either at law or in equity) and includes a duty or non-pecuniary obligation;

property means real or personal property and includes—

- (a) a chose in action; and
- (b) a present, future or contingent right, privilege, interest or power;

security means—

- (a) a mortgage, charge, lien, or pledge; or
- (b) a guarantee; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of any other liability;

transferee, in relation to a transferred asset or liability, means the body to which the asset or liability has been transferred;

transferor, in relation to a transferred asset or liability, means the body from which the asset or liability has been transferred;

transferred asset means an asset transferred under this Schedule;

transferred liability means a liability transferred under this Schedule.

2—Ministerial directions relating to transfers

The Minister may give directions to an electricity corporation requiring it to carry out work directed towards the transfer of assets and liabilities between the corporation and another electricity corporation or proposed electricity corporation.

3—Territorial application of Schedule

- (1) This Schedule applies both within and outside the State.
- (2) This Schedule applies outside the State to the full extent of the extra-territorial legislative power of the State.

Part B—Transfer of assets and liabilities

4—Transfer of assets and liabilities to electricity corporation

- (1) The Minister may, by order in writing, transfer assets or liabilities (or both) between electricity corporations.
- (2) An order under this clause may be varied or revoked by the Minister by further order in writing made before the order takes effect.
- (3) An order may not be made under this clause transferring assets or liabilities (or both) to or from an electricity generation corporation or an electricity transmission corporation established under Part 3 or 4 more than 12 months after the establishment of the corporation (other than an order effecting a transfer between such a corporation and a subsidiary of the corporation).
- (4) A transfer of an asset or liability under this clause operates by force of this Schedule and despite the provisions of any other law or instrument.
- (5) A transfer of a liability under this clause operates to discharge the transferor from the liability.

5—Conditions of transfer

- (1) The Minister may, by order in writing, fix the conditions on which assets or liabilities are transferred to an electricity corporation under this Schedule.
- (2) An order under this clause may be varied or revoked by the Minister by further order in writing.
- (3) The conditions of transfer may, for example, do one or more of the following:
 - (a) assign a value to particular transferred assets, or transferred assets of a particular class;
 - (b) assign a value to particular transferred liabilities, or transferred liabilities of a particular class;
 - (c) assign a net value to particular transferred assets and liabilities, or transferred assets and liabilities of particular classes;
 - (d) impose on the transferee of assets, or assets and liabilities, a liability (in terms set out in the order) to the transferor reflecting the value or net value assigned by the Minister to the assets, or the assets and liabilities.

6—Indemnity if transfer and discharge of liability not recognised under other law

If—

- (a) the transfer of a liability under this Schedule and the consequent discharge from the liability is not recognised under the law of a place outside South Australia; and
- (b) the transferor is required under the law of that place to make a payment in satisfaction of the liability,

the transferor is entitled to be indemnified by the transferee for the payment.

7—Transitional provisions

The following transitional provisions apply in relation to transferred assets and liabilities:

- (a) if an instrument or other document, or oral agreement, understanding or undertaking, is applicable to a transferred asset or liability, then for the purpose of construing the instrument or other document or oral agreement, understanding or undertaking (so far as it applies to the transferred asset or liability)—
 - (i) a reference to the transferor is to be construed as a reference to the transferee; and
 - (ii) a reference to an officer of the transferor is to be construed as a reference to the corresponding officer of the transferee or an officer designated by the chief executive officer of the transferee as the corresponding officer; and
- (b) an instruction, order, authority or notice given to the transferor before the transfer takes effect is, so far as it is referable to a transferred asset or liability, taken to have been given to the transferee; and

- (c) if a security held by the transferor is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability—
 - (i) the security is available to the transferee as security for the discharge of the liabilities to which it relates including, where the security extends to future liabilities, any such liabilities incurred after the transfer; and
 - (ii) the transferee is entitled to the same rights and priorities and subject to the same liabilities in relation to the security as those to which the transferor would have been entitled or subject if there had been no transfer; and
- (d) the transferee is entitled to possession of all documents to which the transferor was entitled immediately before the transfer took effect that are entirely referable to a transferred asset or liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or liability and any other asset or liability that is not transferred; and
- (e) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by the transferor, is (if the transferor's liability under the instrument or order is a transferred liability) payable by the transferee in the same way as if it had been drawn by or on, or accepted or endorsed (as the case may be) by the transferee; and
- (f) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, the transferee may exercise those rights without giving rise to any liability on the part of the transferor for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement; and
- (g) the transferee has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from the transferor as the transferor would have had if there had been no transfer; and
- (h) legal proceedings in respect of a transferred asset or liability commenced by or against the transferor must (subject to discontinuance) be continued and completed by or against the transferee; and
- (i) in legal proceedings relevant to a transferred asset or liability—
 - (i) the transferee will have the same rights and privileges as the transferor would have had if there had been no transfer; and
 - (ii) a document that could have been given in evidence by or against the transferor if there had been no transfer may be given in evidence by or against the transferee; and
- (j) the transferee may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability either in its own name or in the transferor's name.

8—Registering authorities to note transfer

- (1) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions—
 - (a) must, on the application of the transferee, register or record in the appropriate manner the transfer of any transferred asset or liability; and
 - (b) must register an instrument in registrable form, executed by the transferee, relating to property that is a transferred asset even though the transferee is not registered as the proprietor of the property.
- (2) If property is registered in the name of an electricity corporation, the Registrar-General or other registering authority may register a dealing with the property by the corporation or another electricity corporation without being concerned to enquire whether the property is or is not a transferred asset.

9—Exclusion of obligation to enquire

- (1) A person dealing with an electricity corporation is not obliged to enquire whether property to which the transaction relates is or is not a transferred asset.
- (2) If an electricity corporation purports to deal with property as if entitled to it, the transaction is valid even though the corporation purporting to deal with the property is not entitled to do so because the property is, or is not, a transferred asset.
- (3) However, this clause does not validate a transaction if the party dealing with the electricity corporation has actual notice of the deficiency of title, or acts fraudulently.

10—Stamp and other duties or taxes

- (1) No stamp duty or other duty or tax is payable under a law of the State in respect of—
 - (a) any transfer effected by order of the Minister under this Act; or
 - (b) any other transfer or assignment of assets or liabilities between electricity corporations; or
 - (c) an application or entry made, or receipt given or anything else done for a purpose connected with, or arising out of, such a transfer or assignment.
- (2) No person has an obligation under the *Stamp Duties Act 1923* or any other Act—
 - (a) to lodge a statement or return relating to a matter referred to in subclause (1); or
 - (b) to include in a statement or return a record or information relating to such a matter.

11—Evidence

- (1) A certificate issued by the Minister certifying as to the transfer or non-transfer of an asset or liability under this Schedule is to be accepted in any legal proceedings as conclusive evidence of the matter so certified.
- (2) An apparently genuine document purporting to be a certificate of the Minister under subclause (1) is to be accepted in any legal proceedings as such a certificate in the absence of proof to the contrary.

Part C—Transfer of staff

12—Transfer of staff

- (1) The Minister may, by order in writing, transfer an employee from a position in the employment of one electricity corporation to a position in the employment of another.
- (2) An order under this clause may be varied or revoked by the Minister by further order in writing made before the order takes effect.
- (3) A transfer under this clause does not—
 - (a) affect the employee's remuneration; or
 - (b) interrupt continuity of service; or
 - (c) constitute a retrenchment or redundancy.
- (4) Except with the employee's consent, a transfer under this clause must not involve—
 - (a) any reduction in the employee's status; or
 - (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or
 - (c) any change in the employee's place of employment unless the new place of employment is within reasonable commuting distance from the employee's former place of employment.
- (5) For the purposes of subclause (4), responsibility for the same or similar business operations that are smaller in scope as a result of a reduction of the business operations, or responsibility for a lesser number of staff, does not, of itself, constitute a reduction in status.
- (6) A person who is transferred from one electricity corporation to another under this clause is taken to have accrued as an employee of the corporation to which the person is transferred an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the corporation from which he or she was transferred.
- (7) A transfer under this clause does not give rise to a right to any remedy or entitlement arising from cessation or change of employment.
- (8) For the purposes of construing a contract applicable to a transferred employee, a reference to the electricity corporation from which the person is transferred is to be construed as a reference to the corporation to which the person is transferred.

Part D—General

13—Schedule overrides other laws

This Schedule has effect despite the provisions of the *Real Property Act 1886* or any other law.

14—Effect of things done or allowed under Schedule

Nothing done or allowed under this Schedule—

- (a) constitutes a breach of, or default under, an Act or other law; or

- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Electricity Corporations Act 1994* repealed the following:

The Adelaide Electric Supply Company Act 1944

The Adelaide Electric Supply Company's Acts 1897-1931

Electricity Act 1943

Electricity (Country Areas) Subsidy Act 1962

Electricity Supplies (Country Areas) Act 1950

Electricity Supply (Industries) Act 1963

Electricity Trust of South Australia Act 1946

The Electricity Trust of South Australia (Penola Undertaking) Act 1967

Local Electricity Undertakings (Securities for Loans) Act 1950

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1994	89	<i>Electricity Corporations Act 1994</i>	15.12.1994	1.7.1995 (<i>Gazette</i> 29.6.1995 p2978)
1995	54	<i>Electricity Corporations (ETSA Board) Amendment Act 1995</i>	3.8.1995	25.1.1996 (<i>Gazette</i> 25.1.1996 p804)
1996	43	<i>Electricity Corporations (Schedule 4) Amendment Act 1996</i>	20.6.1996	1.7.1996 (<i>Gazette</i> 20.6.1996 p2970)
1996	55	<i>Electricity Corporations (Generation Corporation) Amendment Act 1996</i>	8.8.1996	1.12.1996 (<i>Gazette</i> 28.11.1996 p1744)
1996	96	<i>Electricity Act 1996</i>	19.12.1996	1.1.1997 (<i>Gazette</i> 19.12.1996 p1922)

1999	36	<i>Electricity Corporations (Restructuring and Disposal) Act 1999 as amended by 74/1999</i>	1.7.1999	Sch 4 (cll 4—7, 16 & 17)—29.7.1999 (<i>Gazette 29.7.1999 p528</i>); Sch 3 Pt 2—1.12.1999 (<i>Gazette 23.9.1999 p1214</i>); Sch 4 (cll 8—11)—24.2.2000 (<i>Gazette 24.2.2000 p1070</i>); Sch 4 (cll 12—15)—deleted by 74/1999 without coming into operation; Sch 3 (cl 4(g), (n), (o), (q), (v)—(x), (z), (za), (zb), (zd))—29.5.2002 (<i>Gazette 23.5.2002 p1951</i>); Sch 3 (cl 4(i), (s), (t))—30.6.2002 (<i>Gazette 23.5.2002 p1951</i>); Sch 3 (cl 4(a)—(f), (m))—9.2.2006 (<i>Gazette 9.2.2006 p474</i>); Sch 3 (cl 4(h), (j)—(l), (p), (r), (u), (y), (zc))—uncommenced
1999	(181)	<i>Electricity Corporations (Restructuring and Disposal) (Section 34—Amendment of Electricity Corporations Act) Regulations 1999 (Gazette 2.9.1999 p1096)</i>	—	2.9.1999: r 2
1999	74	<i>Statutes Amendment (Electricity) Act 1999</i>	25.11.1999	Pt 3 s 12(1), (4) & (5)—25.11.1999: s 2(2); s 13—2.12.1999 (<i>Gazette 2.12.1999 p2952</i>); ss 5(a), (c), 8, 9 & 11—20.1.2000 (<i>Gazette 20.1.2000 p294</i>); s 7—30.3.2000 ss 5(b), (d), 6, 10 & 12(2)—31.3.2000 (<i>Gazette 30.3.2000 p1899</i>); s 12(3) expired without coming into operation: s 12(4)
2006	35	<i>Statutes Amendment (Electricity Industry Superannuation Scheme) Act 2006</i>	14.12.2006	Pt 2 (s 4)—uncommenced

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 55/1996 s 3	1.12.1996
	amended by 36/1999 Sch 4 cl 5	29.7.1999
	amended under <i>Legislation Revision and Publication Act 2002</i>	9.2.2006
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	9.2.2006
s 3	<i>substituted by 55/1996 s 4</i>	1.12.1996
	<i>deleted by 36/1999 Sch 4 cl 6</i>	29.7.1999
s 4		
electricity corporation	amended by 55/1996 s 5(a)	1.12.1996
	amended by 74/1999 s 5(a)	20.1.2000
	(b) deleted by 74/1999 s 5(b)	31.3.2000

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ETSA	<i>deleted by 74/1999 s 5(c)</i>	20.1.2000
RESI	inserted by 74/1999 s 5(c)	20.1.2000
SAGC	<i>inserted by 55/1996 s 5(b)</i>	1.12.1996
	<i>deleted by 74/1999 s 5(d)</i>	31.3.2000
s 5	<i>amended by 55/1996 s 6</i>	1.12.1996
	<i>deleted by 74/1999 s 6</i>	31.3.2000
s 6		
s 6(2)	amended by 55/1996 s 7	1.12.1996
s 7	amended by 55/1996 s 8	1.12.1996
s 7A	inserted by 36/1999 Sch 4 cl 7	29.7.1999
Pt 2	heading amended by 74/1999 s 7	30.3.2000
Pt 2 Div 1	heading amended by 74/1999 s 7	30.3.2000
s 8		
s 8(1)	substituted by 74/1999 s 8	20.1.2000
s 8(2)	amended by 74/1999 s 7	30.3.2000
s 9	amended by 74/1999 s 7	30.3.2000
s 10		
s 10(1)	(b) deleted by 55/1996 s 9	1.12.1996
	amended by 74/1999 s 7	30.3.2000
s 10(2)	amended by 74/1999 s 7	30.3.2000
s 11		
s 11(1) and (2)	amended by 74/1999 s 7	30.3.2000
s 12		
s 12(1)	amended by 74/1999 s 7	30.3.2000
s 13		
s 13(1)—(4)	amended by 74/1999 s 7	30.3.2000
Pt 2 Div 14		
s 14		
s 14(1)	amended by 74/1999 s 7	30.3.2000
s 14(2)	amended by 54/1995 s 3(a)	25.1.1996
	substituted by 36/1999 Sch 4 cl 8(a)	24.2.2000
s 14(3)	amended by 74/1999 s 9	20.1.2000
s 14(4)	substituted by 54/1995 s 3(b)	25.1.1996
	substituted by 36/1999 Sch 4 cl 8(b)	24.2.2000
s 14(7)	amended by 36/1999 Sch 4 cl 8(c)	24.2.2000
s 15		
s 15(2)	amended by 36/1999 Sch 4 cl 9(a)	24.2.2000
s 15(3)	amended by 36/1999 Sch 4 cl 9(b)	24.2.2000
s 15(4)	amended by 36/1999 Sch 4 cl 9(c)	24.2.2000
s 17	amended by 36/1999 Sch 4 cl 10	24.2.2000
	amended by 74/1999 s 7	30.3.2000
s 18		
s 18(1)	amended by 54/1995 s 4	25.1.1996

	substituted by 36/1999 Sch 4 cl 11	24.2.2000
Pt 2 Div 3		
s 19		
s 19(1)—(3)	amended by 74/1999 s 7	30.3.2000
Pt 3		
	<i>amended by 55/1996 ss 10—20</i>	<i>1.12.1996</i>
	<i>deleted by 74/1999 s 10</i>	<i>31.3.2000</i>
Pt 4		
s 34		
s 34(3)	amended by 74/1999 s 11	20.1.2000
s 47A		
	<i>inserted by 55/1996 s 21</i>	<i>1.12.1996</i>
	<i>deleted by 36/1999 Sch 4 cl 16</i>	<i>29.7.1999</i>
Pt 5		
s 48		
s 48(1)	amended by 36/1999 Sch 4 cl 17	29.7.1999
s 48(2)	amended by 55/1996 s 22(a), (b)	1.12.1996
s 48(3)	deleted by 55/1996 s 22(c)	1.12.1996
	inserted by 74/1999 s 12(1)	25.11.1999
s 48(4)	inserted by 74/1999 s 12(2)	31.3.2000
s 48A	inserted by 43/1996 s 3	1.7.1996
Sch 1		
	amended by 55/1996 s 23	1.12.1996
	amended by 181/1999 r 3	2.9.1999
	substituted by 36/1999 Sch 3 cl 2 as amended by 74/1999 s 18	1.12.1999
Pt A		
cl 1		
<i>actuary</i>	<i>deleted by 36/1999 Sch 3 cl 4(a)</i>	9.2.2006
<i>the Trust Deed</i>	substituted by 36/1999 Sch 3 cl 4(b)	9.2.2006
Pt B		
cl 4		
cl 4(1)	amended by 36/1999 Sch 3 cl 4(c)	9.2.2006
	(c) deleted by 36/1999 Sch 3 cl 4(d)	9.2.2006
cl 4(6)	amended by 36/1999 Sch 3 cl 4(e) as amended by 74/1999 s 19	9.2.2006
	(d)(ii) and (iii) deleted by 36/1999 Sch 3 cl 4(f) as amended by 74/1999 s 19	9.2.2006
Pt C		
cl 6	substituted by 36/1999 Sch 3 cl 4(g)	29.5.2002
Pt D	deleted by 36/1999 Sch 3 cl 4(h)	uncommenced—not incorporated
Pt F		
cl 9	substituted by 36/1999 Sch 3 cl 4(i)	30.6.2002
Trust Deed	clauses will be renumbered when 36/1999 Sch 3 cl 4(j) comes into operation	uncommenced—not incorporated
cl 1	substituted by 36/1999 Sch 3 cl 4(k)	uncommenced—not incorporated
cl 2		

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cl 2(1)		
electricity corporation	inserted by 36/1999 Sch 3 cl 4(l)	uncommenced—not incorporated
relevant law	inserted by 36/1999 Sch 3 cl 4(m)	9.2.2006
<i>special deposit account</i>	<i>deleted by 36/1999 Sch 3 cl 4(n)</i>	29.5.2002
Trustee	inserted by 36/1999 Sch 3 cl 4(o)	29.5.2002
cl 2(1a)	inserted by 36/1999 Sch 3 cl 4(p)	uncommenced—not incorporated
cl 3		
cl 3(4)	amended by 36/1999 Sch 3 cl 4(q)	29.5.2002
cl 4		
cl 4(1)	substituted by 36/1999 Sch 3 cl 4(s)	30.6.2002
cl 4(5)	amended by 36/1999 Sch 3 cl 4(t)	30.6.2002
cl 4	inserted by 36/1999 Sch 3 cl 4(r)	uncommenced—not incorporated
cl 5		
cl 5(1)	amended by 36/1999 Sch 3 cl 4(u)	uncommenced—not incorporated
cl 5(2) and (3)	amended by 36/1999 Sch 3 cl 4(v)	29.5.2002
cl 7	<i>deleted by 36/1999 Sch 3 cl 4(w)</i>	29.5.2002
cll 8 and 9	substituted by 36/1999 Sch 3 cl 4(w)	29.5.2002
cl 10		
cl 10(1) and (2)	amended by 36/1999 Sch 3 cl 4(x)	29.5.2002
cl 11	<i>deleted by 36/1999 Sch 3 cl 4(z)</i>	29.5.2002
cl 11	inserted by 36/1999 Sch 3 cl 4(y)	uncommenced—not incorporated
cl 18	inserted by 36/1999 Sch 3 cl 4(z)	29.5.2002
cl 12	amended by 36/1999 Sch 3 cl 4(za)	29.5.2002
cl 12	inserted by 36/1999 Sch 3 cl 4(y)	uncommenced—not incorporated
cl 13		
cl 13(1)	amended by 36/1999 Sch 3 cl 4(zb)	29.5.2002
	amended by 36/199 Sch 3 cl 4(zc)	uncommenced—not incorporated
cl 13	inserted by 36/1999 Sch 3 cl 4(y)	uncommenced—not incorporated
cll 14—16	inserted by 36/1999 Sch 3 cl 4(y)	uncommenced—not incorporated
cl 17		
cl 17(3)	amended by 36/1999 Sch 3 cl 4(zd)	29.5.2002
cl 17	inserted by 36/1999 Sch 3 cl 4(y)	uncommenced—not incorporated
Sch 2		
cl 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	9.2.2006
cl 5		
cl 5(4a)	inserted by 74/1999 s 13	2.12.1999
Sch 4	<i>amended by 43/1996 s 4</i>	1.7.1996
	<i>amended by 96/1996 Sch 1 (cl 1)</i>	1.1.1997
	<i>expired: Electricity Corporations Regulations 1997 (Gazette 12.6.1997 p 2986) r 3—omitted under Acts Republication Act 1967</i>	(1.10.1997)

Historical versions

Reprint No 1—25.1.1996

Reprint No 2—1.7.1996

Reprint No 3—1.12.1996

Reprint No 4—1.1.1997

Reprint No 5—29.7.1999

Reprint No 6—2.9.1999

Reprint No 7—2.12.1999

Reprint No 8—20.1.2000

Reprint No 9—31.3.2000

Reprint No 10—29.5.2002

Reprint No 11—30.6.2002